

COUNTY OF YORK

MEMORANDUM

DATE: May 5, 2005 (5/17/05 BOS Mtg.)

TO: York County Board of Supervisors

FROM: James O. McReynolds, County Administrator

SUBJECT: Application No. SE-16-05, Tidewater Development Company, LLC

ISSUE

This application requests a Special Exception, pursuant to Sections 24.1-245(c) and (d) of the York County Zoning Ordinance, to authorize disturbance of the required 45-foot Greenbelt Buffer along the Mooretown Road frontage of property proposed to be developed as the Williamsburg Marketcenter retail complex. The subject property is further identified as Assessor's Parcel Nos. 2-34 and 2-19-B3.

The Board considered this application on April 19, 2005, and the required public hearing was conducted. The Board deferred action pending receipt of additional information concerning the status of the applicant's coordination efforts with adjoining property owners relative to the proposed modifications to the shared stormwater management facilities. Please see Consideration No. 5 (page 3) for information concerning this issue.

BACKGROUND

The Williamsburg Marketcenter development was authorized by Special Use Permit approved by the Board of Supervisors on January 18, 2005 through the adoption of Resolution No. R05-8. Section 24.1-245(c) of the Zoning Ordinance states that greenbelts "shall be left in an undisturbed natural state, unless the board, after conducting a duly advertised public hearing, authorizes clearing or development."

CONSIDERATIONS/CONCLUSIONS

1. The applicant's basic reasons for this request are to:
 - allow the finished grade of the site to be brought up to the elevation of the adjacent Mooretown Road (Section A-A area);
 - to allow the back side of an existing berm to be graded to gradually tie into the elevation of the adjoining proposed Outparcel #6 (Section B-B area); and
 - to allow the significant depression at the proposed Outparcel #8 to be filled to create a building site approximately level with Mooretown Road.

All of these disturbances within the Greenbelt require authorization by the Board of Supervisors under the terms of Section 24.1-245(c) of the Zoning Ordinance.
2. The subject property is part of the 314-acre "Bullifants" tract that was reclassified to Conditional EO-Economic Opportunity in December 1998. The proffered condition associated with that rezoning was that a 35-foot landscaped buffer would be maintained along both sides of Mooretown Road. The proffer does not stipulate that the area be maintained in an undisturbed condition and envisions that it might eventually

include a combination of existing vegetation, new landscaping, berms, walkways and driveway entrances, all of which is subject to administrative review (according to the proffer) by the Zoning Administrator. The Greenbelt provision established by the Zoning Ordinance overlaps and effectively “trumps” this proffer – thus making any disturbance subject to approval by the Board. Nevertheless, should the Board decide to allow the requested disturbance, there would be no conflict with the underlying proffer.

3. The filling and grading that the applicant proposes at the frontage of Outparcel #4 (next to the joint entrance that will be shared by Home Depot and the Marketcenter) is intended to bring the grade of that lot up to the approximate elevation of Mooretown Road. Currently, the portion of this lot closest to the access drive is more than ten feet lower than the elevation of the drive and Mooretown Road. Side slopes along both are steep and a guardrail is in place because of the grade differential. Erosion is beginning to undermine the guardrail support posts. In addition, a large culvert conveying drainage from the hospital side of Mooretown Road discharges into this low area. There are a few mature trees in this area.

The applicant proposes to raise the grade to establish a gentle slope from front to back on the outparcel (see cross-section A-A). The drainage outfall would be piped, thus eliminating the erosion and scouring potential at the edge of the Mooretown Road right-of-way. In addition, the elimination of the steep side slopes and significant grade differential should, subject to VDOT approval, allow the guardrail to be removed. The applicant proposes to establish new landscaping within this area (the 45-foot Greenbelt width) in accordance with the planting ratio for unvegetated Greenbelt Buffers – 90 Landscape Credit Units per 100 linear feet. I believe that the combination of filling, drainage improvements, potential guardrail removal, and landscaping will significantly improve the appearance of this segment of the Greenbelt.

4. The proposed disturbance at the front of Outparcel #6 is intended to create a more gradual slope at the back side of the 45-foot Greenbelt in order to transition to the new grade proposed to be established on the buildable portions of Outparcel Nos. 6 and 7 (see cross-section B-B). In addition, the grading would provide for a gently sloping transition to the grade of the proposed entrance drive between Outparcel Nos. 6 and 7. The mature trees along the front portion of this segment would remain and would be supplemented by new landscaping in accordance with the above-noted LCU ratio.

It should be noted that the entrance drive has not been officially approved. As was noted during the Special Use Permit review process for the Marketcenter, the Zoning Ordinance requires that the need for this *third* entrance to the site be substantiated by a traffic impact analysis that documents compliance with certain standards. I anticipate that the traffic study that will be submitted with the site plan for the Williamsburg Marketcenter project will document this need and, therefore, I believe it would be appropriate for the Board to consider approving the proposed disturbance in this area, conditioned on the entrance being approved at the site plan review stage.

5. The proposed disturbance at the front of proposed Outparcel #8 involves filling portions of a BMP that has been designed to serve this and adjacent properties. It was this aspect of the proposal that prompted the Board to defer the matter and to request additional information.

The existing BMP (stormwater management pond) was constructed by the developer of the Michel Commons office condominium project and is designed to serve that project, the property on which the Williamsburg Marketcenter is proposed, and a small portion of the parent tract (Bullifants property). In addition, it will intercept the outfall from one of the stormwater management ponds that serves the Williamsburg Community Hospital property on the opposite side of Mooretown Road. The construction and long-term maintenance of this pond is covered by an agreement executed by the subject property owners and the County and under that agreement the parcel on which the pond is located is to be conveyed to the County, with the County assuming responsibility for any maintenance and the subject property owners agreeing to pay their proportional share of that future maintenance cost.

The applicant is proposing to reconfigure the shape of this stormwater pond to “shorten” its length with the objective of creating a developable area with a sufficient depth to support commercial development. Doing so would entail providing replacement capacity for any displaced capacity in the existing pond, and also negotiating with the owner of the parent tract (Bullifants) to acquire additional property. The applicant is proposing that the replacement stormwater management capacity be provided through the construction of a second pond adjacent to the rear of proposed shopping center. This pond would intercept runoff from a significant portion of the impervious area on the site (roofs and parking areas) and would pre-treat it before directing it to the reconfigured existing pond. Conceptually, staff believes that this proposed arrangement would be beneficial from both a quantity and quality standpoint. Detailed plans for this proposed work will be a condition of site plan review, as will documentation that any applicable non-tidal wetlands permitting issues have been addressed by the applicant.

As requested by the Board, the applicant has shared his proposed plans with the developer of the Michel Commons project, Mr. Griffith. Staff also met with Mr. Griffith and his engineer in a meeting arranged by Mr. Zaremba, the purpose of which was to discuss the proposal and process that would be involved in reviewing and approving the applicant’s plans. Mr. Griffith has indicated that he does not object in principal to the applicant’s plans for the stormwater facility as long as there is an assurance that the future maintenance obligations (costs) of the Michel Commons Condominium Association will not be increased. His particular concern is that nothing be done that would increase the potential for sediment build-up in the pond.

Based on the terms of the existing stormwater management agreement and given the discussions among the parties and consultation with the County Attorney, it is my opinion that the stormwater management pond reconfiguration is dependent on review and approval by all the parties to the agreement. In other words, the Marketcenter developer will not be able to proceed with his plans to fill a portion of the existing pond

and reconfigure its boundaries without approval of all the parties and the County Attorney has suggested that the best way to document that approval would be through the execution of an addendum to the existing agreement. However, there would be no point in the applicant pursuing such an agreement if the County does not authorize the disturbance (filling) in the Greenbelt area (the front 45 feet of the potential Outparcel #8). Therefore, action on the Greenbelt disturbance request is a threshold issue.

With the agreement addendum as a prerequisite, which can be made a condition of the Board's approval of this application, I believe that it would be appropriate for the Board to approve the proposal to fill the Greenbelt portion of this potential outparcel. Assuming that the parties agree to the pond reconfiguration, staff believes that filling this area will create a much more attractive frontage along Mooretown Road, eliminating the depressed area that is essentially void of mature trees and that cannot support attractive and easily visible new landscaping in its current topographic condition.

RECOMMENDATION

I believe that the applicant's proposal for grading and re-landscaping within the 45-foot Greenbelt will result in a more attractive road frontage than would be the case if existing conditions were maintained. I believe that this is an appropriate and fitting situation for the Board to exercise its authority to allow disturbances within an existing Greenbelt area and I am of the opinion that the applicant's proposed replacement landscaping will complement the existing vegetation in the areas to be left undisturbed. Accordingly, I recommend approval of the request, subject to certain conditions as outlined in the attached proposed Resolution No. R05-80R. Please note the addition of proposed Condition No. 1.c., which addresses the need for coordination with and approval by the parties to the existing stormwater management pond agreement.

Carter/3337

Attachments:

- Vicinity Map
- Marketcenter concept plan
- Proposed Resolution No. R05-80R